



MAIL STOP PETITIONS

DAE
JWV

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jarrod Barr

Attorney Docket No. SECC-1-1001

Serial No.: 09/927,433

Group Art Unit: 3727

Filing Date: August 10, 2001

Examiner: ELKINS, G.

Title: MODULAR PACK SYSTEM WITH BELT AND LEG BAGS

**PETITION TO WITHDRAW HOLDING OF ABANDONMENT
OFFICE ACTION NOT RECEIVED**

TO THE COMMISSIONER FOR PATENTS:

1. I hereby petition to withdraw the holding of abandonment in this case on the basis that a Notice of Allowance forming the basis of the abandonment was not received.

2. I hereby state:

a. On July 22, 2004, Examiner Gary Elkins issued a Notice of Allowance and Fees Due in the above-captioned matter requiring payment of the Issue and Publication Fees by October 22, 2004.

b. On October 6, 2004, Examiner Elkins called Attorney Darren Jones of Black Lowe & Graham PLLC to initiate an Interview regarding newly found art that the Examiner considered to be a suitable reference against the Application and thus would require withdrawal of the notice of Allowance with respect to Claim 5.

c. On October 15, 2005, Attorney Lawrence Graham returned the Examiner's telephone call and completed the interview, authorizing an Examiner's Amendment to Claim 5 making it allowable in light of the newly found art. Mr. Graham understood that he would receive a new Notice of Allowance, in view of the fact that the interview summary and Supplemental Notice of Allowability would not be received until after the expiration of the original Notice of Allowance.

25315

CUSTOMER NUMBER

- 1 -

SECC-1-1001PETWIT

BLACK LOWE & GRAHAM^{PLLC}

701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

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01 FC:1464

d. On October 20, 2004, rather than to send the expected Notice of Allowability and a new Notice of Allowance with a new procedural deadline for response, Examiner Elkins mailed a Supplemental Notice of Allowability, indicating the allowed claims including Claim 5 and included, attached to that notice, the summary of the Examiner-initiated Interview.

e. On October 22, the Notice of Allowance and Fees Due expired on its face. Black Lowe & Graham PLLC had not yet received the Supplemental Notice of Allowability.

g. No further Notice of Allowance is shown on Private PAIR.

3. As a result of the timing of the receipt of the Notice of Allowance and Mr. Graham's reasonable expectation that a new Notice of Allowance would issue because of the Examiner's own initial perception that the newly found art would require the withdrawal of the prior Notice of Allowance. Also, in the view of the attorneys of record, allowance could not have occurred according to the original tenor of the Notice of Allowability and because the Claim 5 to which the original Notice of Allowability related, was distinct from the Claim 5 the Examiner allowed on October 20, by virtue of the Examiner's Amendment, the Applicant is entitled to a distinct Notice of Allowability.

4. The Attorneys of Record did not receive the Supplemental Notice of Allowability within the two days between the date of mailing and the expiration of the original Notice of Allowability. That a Supplemental Notice of Allowability would issue rather than a new Notice of Allowability was nowhere indicated in the conversations or correspondence before the date of mailing for the Supplemental Notice of Allowance.

5. During the pendency of the resolution of allowability of Claim 5, the Attorneys have been reticent to pay the Issue Fee and Publication Fee without seeing the written Examiner's Amendment. While the matter of Claim 5 remained unresolved, the Attorneys believed that Notice of Allowance would be withdrawn and a new Notice of Allowance issued with respect to all of the claims including the amended Claim 5.
6. In consideration of these submissions it is respectfully requested that any holding of abandonment be withdrawn and that a new Notice of Allowance issue.
7. The petition fee is paid by the enclosed check in the amount of \$130.00. Please charge Deposit Account No. 501,050 for any fee deficiency or credit this account for any overpayment for this petition.

Respectfully submitted,

BLACK LOWE & GRAHAM^{PLLC}



Mark L. Lorbiecki
Registration No. 45,643
Direct Dial: 206.903.1800

MAIL CERTIFICATE

I hereby certify that this communication is being deposited with the United States Postal Service via First Class Mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: MAIL STOP PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4/7/05
Date of Deposit


[Signer]



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**TRANSMITTAL LETTER FOR PETITION TO WITHDRAW
HOLDING OF ABANDONMENT**

Enclosed with this transmittal letter are the following papers:

1. Petition to Withdraw Holding of Abandonment.
2. Check No. 13748 in the amount of \$130 (petition fee).
3. Return postcard.

Respectfully submitted,

BLACK LOWE & GRAHAM^{LLC}

Mark L. Lorbjecki
Registration No. 45,643
Direct Dial: 360.903.1800

EXPRESS MAIL CERTIFICATE

I hereby certify that this communication is being deposited with the United States Postal Service via First Class Mail under 37 C.F.R. § 1.08 on the date indicated below addressed to: Commissioner for Patents, MAIL STOP PETITIONS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

4/7/05
Date of Deposit

Michelle Funston-Carman

25315

CUSTOMER NUMBER

- 1 -

SECC-1-1001TL04

BLACK LOWE & GRAHAM^{LLC}

701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301